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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/593,550

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Hisae Kume

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SALIWANCHIK LLOYD & SALIWANCHIK
A PROFESSIONAL ASSOCIATION
PO Box 142950
GAINESVILLE, FL 32614

EXAMINER

DUBOIS, PHILIP A

ART UNIT

PAPER NUMBER

1781

NOTIFICATION DATE

DELIVERY MODE

05/28/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

euspto@slspatents.com

Office Action Summary	Application No. 10/593,550	Applicant(s) KUME ET AL.	
	Examiner PHILIP DUBOIS	Art Unit 1781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/22/10; 6/4/08; and 4/20/07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claim 5 is objected to because of the following informalities: the use of the term "or" in line 2 is potentially confusing as it is unclear whether the fat is also plant-derived. Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claims 6-7 and 9-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. Claim 6 is rejected for reciting the phrase "constituent combination of any one of Table 1, 3 or 5", as it is unclear as to what ingredients and amounts fall within the scope of the claim. Additionally, claims should be self-contained, when possible. In circumstances where an invention cannot be defined in words and it is more concise to incorporate figures or tables by reference, it is acceptable to do so. However, the ingredients and amount of a composition can be defined by words. Accordingly, the reference to the tables must be removed so that one can determine the metes and bounds of the claim.
5. Claim 7 is rejected for reciting the term "using" because it is unclear how the fermented dairy product is being used as an ingredient.

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6. Claim 9-10 are rejected because it is unclear how the proteins are "derived" from a fermented dairy product (e.g., are the proteins merely obtained from the fermented dairy product or have they somehow been further modified).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over IZVEKOVA.

9. IZVEKOVA renders obvious claims 1-4 as IZVEKOVA discloses fermented milk products are highly nutritious. The products have typical energy values of about 20 to about 540 kilocalories (per 100 gms of product). In addition, they are typically comprised of the following (wt. %): proteins, 0.35-34.0; fats, 0.05-36.0; carbohydrates, 1.5-70.0; organic acids (in terms of lactic acid), 0.6-56.0 wt.; vitamins (in 100 grams), 0.95-15.9 mg; water, 3.7-94.6 wt (see column 5, lines 20-26). In one embodiment, the fermented milk product is a liquid (e.g. a fermented milk drink or infant formula). In another embodiment, the milk product is solidified (e.g. into a yogurt, curd or ice cream-like composition) (col. 4, lines 1-10). IZVEKOVA is silent as to the precise amount of lactic acid that is present in the composition in terms of milligrams and pH. However, it would have been obvious to optimize the amount of lactic acid present in the composition to

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vary the amount of lactic acid provided in the composition to provide a suitable level of acidity as suggested by IZVEKOVA at column 4, lines 64-66. Thus, claims 1-4 would have been obvious to one skilled in the art.

10. Regarding claim 5, IZVEKOVA discloses that the fermented milk product can be blended with olive oil at column 8, line 30-33.

11. As to claims 6-10, IZVEKOVA discloses that if the milk to be fermented has not been pasteurized, sterilization can be accomplished using methods which are well-known in the art. For example, the milk can be heat-treated at an appropriate temperature, which can vary according to the type of milk, the ultimate manufactured product and the needs of the consumer. A homogenous product is produced in Example 4 (see column 5, lines 1-10 and column 8, lines 30-33). In example 5, all of the proteins obtained are "derived" from a fermented dairy product (see column 8, lines 55 to column 9, line 10).

12. Thus, claims 1-10 are obvious in view of IZVEKOVA.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PHILIP DUBOIS whose telephone number is (571) 272-6107. The examiner can normally be reached on Monday-Friday from 9:30am-7:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/PHILIP DUBOIS/
Examiner, Art Unit 1781

/Keith D. Hendricks/
Supervisory Patent Examiner, Art Unit 1781